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Government of the District of Columbia

Public Employee Relations Board

In the Matter of:)	
)	
District of Columbia Public Schools,)	
)	PERB Case No. 13-A-09
Petitioner,)	
)	
v.)	
)	Opinion No. 1402
Council of School Officers, Local 4, American)	
Federation of School Administrators, AFL-CIO)	
(on behalf of Deborah H. Williams),)	
)	CORRECTED COPY
Respondent.)	

DECISION AND ORDER

I. Statement of the Case

The District of Columbia Public Schools (“DCPS” or “Petitioner”) filed an arbitration review request (“Request”) of an arbitration award (“Award”) by Arbitrator Joseph M. Sharnoff (“Arbitrator”). The Request invokes Rule 538.2, which provides that the Board shall notify the parties that they may file briefs on the issues contained in an arbitration review request if the Board finds that there may be grounds to modify or set aside the award. The Respondent Council of School Officers Local 4, American Federation of School Administrators, AFL-CIO, (“Union” or “Respondent”) filed an opposition, which stated only that “the Union hereby submits its objection to the Arbitration Review Request filed by the District of Columbia Public Schools” and requested an opportunity to submit briefs. DCPS filed a motion asking the Board to set a briefing schedule, noting the Union’s request and again citing Rule 538.2.

II. Discussion

A. Award

After holding hearings, the Arbitrator found the following pertinent facts: DCPS hired Deborah H. Williams (“Williams” or “Grievant”) as a teacher at the Sharpe Health School for the 2005-2006 school year. DCPS appointed the Grievant principal at the Sharpe Health School at the start of the 2007-2008 school year. (Award at p. 2). She held that position in May 2010

when the chancellor of DCPS sent her a "Notice of Non-Reappointment as Principal for the 2010-2011 School Year." The notice stated, "The action is effective at the close of business on June 25, 2010." The notice advised the Grievant that DCPS would honor any rights that she might have to revert to her highest prior permanent level of employment if she provided written notification of her intent to exercise those rights by May 28, 2010. (Award at pp. 4, 14-15). The effective date of the non-reappointment did not arrive before the chancellor issued to Williams a notice of termination dated June 18, 2010. The Union filed a grievance on behalf of Williams "in protest of her termination as without just cause under the Parties' CBA." (Award at p. 16).

The Arbitrator issued the following Award:

The grievance is sustained. The District of Columbia Public Schools is directed to reinstate the Grievant, Deborah Hall Williams to her former, or fully equivalent position as a Principal in the DCPS school system and make her whole for all losses, including back pay and seniority, under the CBA, less any appropriate set offs. The Arbitrator hereby retains jurisdiction for the limited purpose of resolving any disputes concerning the remedy only.

(Award at p. 26).

B. Analysis

The Request asserts that the remedy of reinstating the Grievant as a principal is contrary to law and public policy. The Request concludes: "The Agency respectfully requests the Board to determine, pursuant to PERB Rule 538.2, that there may be grounds to modify or set aside the Arbitrator's award for fees or that the Parties may fully brief these issues pursuant to the same Board Rule." (Request ¶ 15). The reference to fees appears to be erroneous as fees were not awarded. The substance of the Request, an objection to the reinstatement remedy, raises the initial question of whether this matter is properly before the Board as the Arbitrator stated that he retained "jurisdiction for the limited purpose of resolving any disputes concerning the remedy only." (Award p. 26).

The only act of an arbitrator that the Board may review is a final award. *D.C. Dep't of Consumer & Regulatory Affairs v. AFGE, Local 2725*, 59 D.C. Reg. 15198, Slip Op. No. 1338 at p. 2, PERB Case No. 11-A-01 (2012); *Univ. of D.C. and Univ. of D.C. Faculty Ass'n/NEA*, 38 D.C. Reg. 845, Slip Op. No. 260 at p. 2, PERB Case No. 90-A-05 (1990). Arbitrators not infrequently retain jurisdiction regarding part or all of a remedy. In deciding whether an award in which an arbitrator has retained jurisdiction is final, the Board considers whether the matter the arbitrator retained jurisdiction to address was resolved or unresolved by the award. Guided by *U.S. Department of the Treasury, Customs Service Nogales, Arizona and National Treasury Employees Union Chapter 116*, 48 FLRA 938 (1993), the Board has held that where the arbitrator retained jurisdiction to consider any requests regarding an issue that the award resolved, the award is nonetheless final. *D.C. Dep't of Consumer & Regulatory Affairs and AFGE, Local 2725*, 59 D.C. Reg. 5392, Slip Op. No. 978 at pp. 4-5, PERB Case No. 09-A-01

(2009). In *Department of Consumer and Regulatory Affairs*, the arbitrator “retain[ed] jurisdiction for sixty days for the purpose of clarifying the remedy if needed upon request of the parties to consider any request, if any, for attorney fees. . . .” *Id.* at p. 3. Conversely, an award is not final if the arbitrator retained jurisdiction to address an unresolved issue, as was the case in *University of the District of Columbia v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. No. 1333, PERB Case No. 12-A-01 (2012), where the arbitrator left the amount of attorneys’ fees unresolved and remanded the question for the parties to negotiate, retaining jurisdiction to resolve their disputes. *Id.* at 6.

The present case is parallel to *Department of Consumer and Regulatory Affairs*. The remedy is complete and fully resolved; the Arbitrator retained jurisdiction only to entertain any disputes the parties might bring to him. As the matter is properly before the Board, we will consider the parties’ requests that the Board order briefs to be filed.

A party does not need the Board’s permission to submit a brief with its arbitration review request or its opposition to an arbitration review request. See *Int’l Bhd. of Police Officers Local 445 (on behalf of Nelson) and D.C. Dep’t of Admin. Servs.*, 41 D.C. Reg. 1597, Slip Op. No. 300 at p. 2 n.3, PERB Case No. 91-A-05 (1992). There is a circumstance in which the Board must request briefs. When the Board finds that there may be grounds to modify or set aside an award, Rule 538.2 requires the Board to notify the parties of that fact and give them fifteen (15) days to file briefs.

The alleged ground for modifying the Award is that it is contrary to title 5 of the District of Columbia Municipal Regulations (“DCMR”), which provides that principals are appointed to one-year terms and that “[r]etention and reappointment shall be at the discretion of the Superintendent.” 5 DCMR § 520.2. The Petitioner maintains that the Grievant did not challenge her non-reappointment to the position of principal and this non-reappointment remains effective. By reinstating the Grievant to the position of principal, the Petitioner concludes, the Award conflicts with the DCMR.¹

DCPS and the Arbitrator agree that the Union grieved only the termination and not the non-reappointment. (Request ¶ 9; Award at p. 26). They dispute whether the non-reappointment stands following the termination. DCPS denies that there is “any evidence the Chancellor rescinded her decision to non-reappoint Ms. Williams.” (Request ¶ 9). The Arbitrator, in contrast, stated, “With regard to the reinstatement directive, the Arbitrator finds that the termination letter issued to the Grievant by the DCPS was intended to, and did, have the effect of making null and void the previously issued Notice of Non-Reappointment.” (Award at p. 26) The Board will not overturn an arbitrator’s finding on the basis of a disagreement with the arbitrator’s determination. *F.O.P./Dep’t of Corrs. Labor Comm. v. D.C. Dep’t of Corrs.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at p. 6, PERB Case No. 10-A-20 (2012). Nonetheless, reinstating the Grievant as a principal may conflict with the DCMR notwithstanding a rescission

¹ The Request also criticizes the arbitrator’s evaluation of evidence. (Request ¶ 14). The Request does not connect the criticism to the claim that the Award is contrary to law. A dispute with an arbitrator’s evaluation of evidence does not raise an issue for review. *D.C. Hous. Auth. and AFGE, Local 2725 (on behalf of Banjo)*, 46 D.C. Reg. 6882, Slip Op. No. 591 at p. 2, PERB Case No. 99-A-04 (1999).

of the notice of non-reappointment. Section 520.5 of title 5 of the DCMR provides, "An appointment to the position of Principal or Assistant Principal shall expire automatically upon the completion of the stated term, unless the appointment has been renewed by the Board of Education, upon recommendation of the Superintendent, prior to expiration." In view of this and other sections of title 5 of the DCMR, the Board hereby notifies the parties that it finds that there may be grounds to modify or set aside the Arbitrator's award.

DCPS requested a briefing schedule. The schedule is set by Rule 538.2. The parties shall have "fifteen (15) days from the time of notice to file briefs concerning the matter."²

ORDER

It is hereby ordered that:

1. The Board requests the parties to brief fully the issue of whether the Award's directive that the Grievant be reinstated "to her former, or fully equivalent position as a Principal in the DCPS school system" is contrary to title 5 of the DCMR and subject to being modified or set aside pursuant to section 1-605.02(6) of the D.C. Code. The findings of fact of the Arbitrator, the trier of fact, are conclusive. No recitation of the facts is needed.
2. The briefs are due on August 13, 2013.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

Washington, D.C.

July 29, 2013

² In finding Rule 538.2 applicable, the Board expresses no opinion as to the merits of the Petitioner's arbitration review request.

CERTIFICATE OF SERVICE

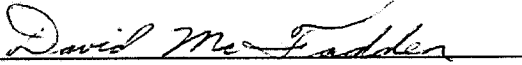
This is to certify that the attached Decision and Order in PERB Case No. 13-A-09 was transmitted via File & ServeXpress to the following parties on this the 29th day of July, 2013.

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